SUBJECT INDEX

Page

Statement 1

Facts 2

Issues Presented 5

I.

Petitioner's Conviction Was Not a Violation of Due Process of Law 5

II.

Petitioner's First Amendment Rights Were Not Violated 9

III.

Issues of Fact Are Not Subject to Review by This Court 10

Conclusion 11

TABLE OF AUTHORITIES CITED

Cases	Page
Adderly v. Florida, (1966) 385 U.S. 39, 17 L. Ed. 2d 149	9
Bouie v. Columbia, (1964) 378 U.S. 347, 12 L. Ed. 2d 894	8
Cameron v. Johnson, (1968) 390 U.S. 611, 20 L. Ed. 2d 182	9
Clark v. Crane, (1881) 57 Cal. 629	8
Hoag v. New Jersey, (1958) 356 U.S. 464, 2 L. Ed. 2d 913	10
Hoffman, In re, (1967) 67 Cal. 2d 845, 64 Cal. Rptr. 97	9
People v. Agnello, (1968) 259 Cal. App. 2d 785, 66 Cal. Rptr. 571	5, 6
People v. Huss, (1966) 241 Cal. App. 2d 361, 51 Cal. Rptr. 56	9
People v. Weger, (1967) 251 Cal. App. 2d 584, 59 Cal. Rptr. 661, cert. den. 389 U.S. 1047, 19 L. Ed. 2d 840	8
Watts v. Indiana, (1949) 338 U.S. 49, 93 L. Ed. 1801	10

Statutes	
California Penal Code, Sec. 602(j)	1
California Penal Code, Sec. 602.7	1, 5

IN THE

Supreme Court of the United States

October Term, 1969
No. 1476

MARGARET WRIGHT, *Petitioner,*

vs.

PEOPLE OF THE STATE OF CALIFORNIA, *Respondent.*

Brief of Respondent in Opposition to Petition for Writ of Certiorari.

STATEMENT.

Petitioner was charged by the People of the State of California in a verified complaint filed in the Municipal Court of Los Angeles Judicial District with a violation of Sections 602(j) and 602.7 of the Penal Code of the State of California, Misdemeanors.

She was duly arraigned, informed of the charges against her and of her legal rights, entered a plea of not guilty and waived her right to a jury trial.

Petitioner was convicted of violating Penal Code Section 602.7. She appealed to the Appellate Department of the Superior Court for the County of Los Angeles, which court affirmed the judgment of conviction with an unreported written opinion on January 9, 1970. A petition for rehearing or certification to the California Court of Appeal was denied on January 28, 1970. Petitioner now seeks a writ of certiorari in this Court.

FACTS.

Petitioner, on January 8, 1969, was neither a student, officer, nor an employee of the San Fernando Valley State College, nor was she required by her employment to be on the campus on that date or at that time [E. S. p. 1, lines 22-24].[1]

On January 8, 1969, petitioner arrived at the campus of San Fernando Valley State College at or about 1:00 P.M. at which time the college was open and a normal school day was in progress [E. S. p. 1, lines 19-22]. Petitioner had come to the campus at the invitation of the Valley State Chapter of the Black Student Union to speak at a rally in an area on the campus grounds that had been set aside by the college as a "free speech" area [E. S. p. 1, lines 25-29].

Petitioner addressed a crowd numbering from 300 to 400 persons in the "free speech" area and then went to the front of the administration building [E. S. p. 2, lines 2-24]. Petitioner stated that she had been invited to go to the administration building by various members of the Black Student Union in order to discuss their grievances with Dr. Delmar Oviatt, then Acting Dean of the College [E. S. p. 2, lines 8-12]. She had no appointment to see Dr. Oviatt [E. S. p. 2, lines 15-16].

Petitioner marched from the "free speech" area to the administration building at the head of the line followed by a crowd of 400 individuals [E. S. p. 2, lines 17-22].

---

[1]Meaning: Engrossed Statement on Appeal.

At the time the crowd, which had grown to approximately 500 persons, gathered in front of the administration building, said building was still in operation and business was being conducted as usual [E. S. p. 2, lines 28-30; p. 3, lines 5-9].

The crowd formed a semi-circle around the West entrance area of the administration building and various individuals including petitioner spoke to the assembled crowd by means of an amplification system [E. S. p. 2, lines 30-32; p. 3, line 1]. During this period of speeches, there was a great deal of general crowd noise and intermittent chants of "We want Oviatt. We want amnesty." [E. S. p. 3, lines 2-5].

At this time the doors of the administration building were not locked. Dr. Earl Wallace, then Acting Dean of Students and the officer of the college who had been designated to maintain order on the campus, feared that the crowd would attempt to enter the administration building and act in such a manner as to disrupt the business being carried on therein [E. S. p. 3, lines 10-15].

At approximately 2:00 P.M., Dr. Wallace took a position in front of the West entrance of the administration building and, with the aid of the bullhorn, advised the entire crowd that "demonstrations would not be permitted inside the building, that those entering the building would be subject to arrest and campus discipline." [E. S. p. 3, lines 30-32; p. 4, lines 1-4]. Dr. Wallace testified that over the space of a few minutes

he made the announcement to the crowd several times in a loud voice [E. S. p. 4, lines 5-6].

Several witnesses for the prosecution testified that they were in the crowd, one witness claiming to be as near as five feet from petitioner, and that they were able to hear and understand Dr. Wallace's announcement [E. S. p. 4, lines 7-10].

At about 2:20 P.M., Reverend Hargett addressed the crowd including petitioner, by means of a bullhorn, and advised them that they were going to peacefully enter the administration building [E. S. p. 4, lines 15-20]. Various members of the crowd began to form a line in order to enter the building [E. S. p. 4, lines 21-22].

George Norris, a member of the police security force of the college, was acting under Dr. Oviatt's authority to keep order in the building at the time of the events in question [E. S. p. 4, lines 22-25].

Petitioner was no more than an arms length away from Mr. Norris when he stretched out his arms and warned persons in front of him against coming into the building [E. S. p. 4, lines 31-32; p. 5, lines 1-2]. Reverend Hargett pushed Mr. Norris aside. Petitioner immediately entered. Mr. Norris stated that they entered the building like marbles tumbling out of a bag [E. S. p. 4, lines 25-29]. Following her entry, petitioner was placed under arrest [E. S. p. 5, lines 3-4].

ISSUES PRESENTED.

I.

Petitioner's Conviction Was Not a Violation of Due Process of Law.

California Penal Code Section 602.7 states:

> "(a) In any case in which a person who is not a student or officer or employee of a state college or state university, and who is not required by his employment to be on the campus or any other facility owned, operated or controlled by the governing board of any such state college or state university, enters such campus or facility, and it reasonably appears to the chief administrative officer of such campus or facility or to an officer or employee designated by him to maintain order on such campus or facility that such person is committing any act likely to interfere with the peaceful conduct of the activities of such campus or facility or has entered such campus or facility for the purpose of committing any such act, the chief administrative officer or officer or employee designated by him to maintain order on such campus or facility may direct such person to leave such campus or facility, and if such person fails to do so, he is guilty of a misdemeanor."

In *People v. Agnello,* (1968) 259 Cal. App. 2d 785, 792, 66 Cal. Rptr. 571, the Court in upholding validity of California Penal Code Section 602.7 stated:

> "'We perceive no constitutional infirmity for uncertainty in this statute which thus punishes a refusal to move upon an order by one authorized to so order in the limited circumstances prescribed in

§602.7 (*Cox v. Louisiana* (1965) 379 U.S. 536, 551 [13 L. Ed. 2d 471, 482, 85 S. Ct. 453]), where the act is likely to interfere with public property (*In re Bacon* (1966) 240 Cal. App. 2d 34, 46-47 [49 Cal. Rptr. 322]) being used for the purposes for which it was dedicated (*Adderly v. Florida* (1966) 385 U.S. 39 [17 L. Ed. 2d 149, 87 S. Ct. 242]). It does not require 'the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application." (*People v. McCaughan* (1957) 49 Cal. 2d 409, 414 [317 P. 2d 974]) and cases there cited.' "

The Court further summarized the statute in question at page 792 as being one ". . . which draws upon breach of the peace and trespass concepts, [with] the gravamen of offense [being] conduct . . ." The conduct in question is the refusal to obey a direction by one in charge of maintaining order on a campus and in its facilities, ". . . when there is reasonable and probable cause to believe acts of the person directed to leave are interfering with the peaceful conduct of the activities for which the institution is dedicated or that such person came onto the campus or facility for the purpose of committing such act of interference, and when the person directed to leave is not a student, officer, or employee of that institution and furthermore whose employment does not require him to be on such campus or facility." Phrases used in the statute such as "any act", "likely to interfere", "peaceful conduct", and "reasonably appears", were found to be clear, unambiguous and commonly understood by the average person (*People v. Agnello, supra*).

Petitioner does not claim to be exempt from the above statute by virtue of status nor does she contest that the entry of the crowd into the administration building would constitute an act likely to interfere with the peaceful conduct of the activities of such facility. She does, however, urge that a violation of due process of law occurred in the way the trial court interpreted the third element of the statute.

Petitioner's theory involves the concept of judicial enlargement of a criminal statute in that the trial court equated the statutory requirement of asking one to leave with the command not to enter. However, the circumstances of this case reflect the contrary. The trial court did not enlarge the meaning of the statute, it only established that petitioner's conduct came within the purview of the statute.

The statute was substantially complied with in that petitioner was warned numerous times by those in charge not to enter the Administration Building. She was told *in advance* that if she disobeyed the orders she would be subject to criminal prosecution. Some of these warnings were given contemporaneously with petitioner's entry. There could be no more forceful way of telling petitioner to leave than to advise her that entry would result in arrest and removal.

Dr. Wallace had warned that those persons entering the building would be subject to arrest and campus discipline. Mr. Norris who was standing at the door of the administration building when the crowd started to enter stretched out his arms and warned people against entry. Petitioner was observed to be only an arms length away from him at the time he made this

announcement, however she ignored the warning and immediately entered.

The law does not require an individual to perform a futile act (*Clark v. Crane,* (1881) 57 Cal. 629, 635). It would be unreasonable to hold that Mr. Norris, whose initial warning was ignored and who was pushed aside by the crowd that was entering, should have then told them to leave. Having been pushed once, could he then be required to subject himself to possible bodily harm by pushing back to make an idle demand? Implicit in his order not to enter the building was the statutory admonition to leave. While the letter of the statute was not strictly complied with, the spirit of it was. A statute should be read "'. . . in the light of the objective sought to be achieved by it as well as the evil sought to be averted.'" (*People v. Weger,* (1967) 251 Cal. App. 2d 584, 590, 59 Cal. Rptr. 661; Cert. denied, 389 U.S. 1047, 19 L. Ed. 2d 840).

> "'. . . a narrow or restricted meaning should not be given a word if it would result in evasion of the evident purpose of the act, or if a broader meaning would prevent evasion and carry out the purpose'" (*People v. Weger, supra*).

Once petitioner entered the building, she was not directly asked to leave. However, she had been told *not* to enter, and therefore, respondent contends she was not misled into believeing she could remain.

For these reasons petitioner's reliance on *Bouie v. Columbia,* (1964) 378 U.S. 347, 12 L. Ed. 2d 894 is clearly misplaced. While in *Bouie* the defendants were not warned that their conduct would violate the statute, petitioner herein was given fair warning of what she was precluded from doing.

BLEED THROUGH POOR COPY

II.

Petitioner's First Amendment Rights Were Not Violated.

The admonition that denied petitioner entry to the administration building did not infringe upon her First Amendment rights. All it prohibited was the obstruction of, and unreasonable interference with, the activities of the facility. Due to the size of the crowd, the college had a legitimate interest in denying entry to petitioner. (*Cameron v. Johnson,* (1968) 390 U.S. 611, 20 L. Ed. 2d 182, 191).

> "Reasonable and objective limitations can be placed on the number of persons who can be present for First Amendment activities at the same time, and the persons present can be required so to place themselves as to limit disruption." (*In re Hoffman,* (1967) 67 Cal. 2d 845, 853, 64 Cal. Rptr. 97).

The rights of free speech and assembly while funda-, mental in our society, do not mean that every one wishing to protest in such a manner may do so at any time, at any place, and under any circumstances. (*Adderly v. Florida,* (1966) 385 U.S. 39, 17 L. Ed. 2d 149, 156; *People v. Huss,* (1966) 241 Cal. App. 2d 361, 370, 51 Cal. Rptr. 56).

As the crowd approached the administration building they were given numerous warnings. Dr. Wallace, with the aid of the bullhorn, advised them that "demonstrations would not be permitted inside the building, that those entering the building would be subject to arrest and campus discipline." [E. S. p. 4, lines 2-4].

Petitioner alleges that the above warning was so ambiguous that she was not given fair notice of the particular type of conduct that was prohibited.

Respondent contends, that the words used by Dr. Wallace did not proscribe the doing of or engaging in any activity in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application.

The evidence, however, does not stop here. A further admonition was given by Mr. Norris when petitioner was only an arms length away, and was about to enter the building.

Even if petitioner believed that Dr. Wallace's statement was ambiguous, she could not have possibly misunderstood Mr. Norris' warning [E. S. p. 4, lines 2-24; p. 5, lines 1-2].

III.

Issues of Fact Are Not Subject to Review by This Court.

The trial court having heard the evidence, determined as a matter *of fact* that petitioner heard the various admonitions that were given. The Appellate Department of the Los Angeles Superior Court in affirming the conviction, concurred with this determination.

On review of state convictions, issues of fact are for conclusive determination by the state courts and are not open for reconsideration by this Court. (*Hoag v. New Jersey,* (1958) 356 U.S. 464, 2 L. Ed. 2d 913, 920; *Watts v. Indiana,* (1949) 338 U.S. 49, 93 L. Ed. 1801.)

Conclusion.

The Petition for Writ of Certiorari does not disclose that there has been a violation of petitioner's rights under the Federal Constitution, nor does it show that the highest court of the State of California in this proceeding has decided a Federal question in conflict with applicable decisions of this Court, or decided a Federal question of substance not theretofore determined by this Court.

It is urged that the petition be denied.

Respectfully submitted,

ROGER ARNEBERGH,
City Attorney,

PHILIP E. GREY,
Assistant City Attorney,

MICHAEL T. SAUER,
Deputy City Attorney,

MADELEINE FLIER,
Deputy City Attorney,

Attorneys for Respondent.